

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3587 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

BHOLIDAS BECHARBHAI PATEL

Versus

STATE OF GUJARAT & ORS

Appearance:

Shri N.A. Pandya, Advocate, for Shri Prashant G.
Desai, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 16/07/96

ORAL JUDGEMENT

The order passed by the Mamlatdar and Agricultural Lands Tribunal at Gandhinagar (respondent No. 2 herein) on 15th June 1984 in Tenancy Case No. 3049 of 1983 as affirmed in appeal by the order passed by

the Deputy Collector at Gandhinagar (the appellate authority for convenience) on 23rd December 1985 in Tenancy Appeal No. 164 of 1984 as affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience) on 10th January 1989 inter alia in Revision Application No. TEN B.A. 231 OF 1986 is under challenge in this petition under art. 227 of the Constitution of India. By its impugned order, respondent No. 2 declared invalid the transaction for purchase of land by the petitioner entered into with one Nathaji Ravaji (the deceased for convenience) with respect to one parcel of land bearing survey No. 141 admeasuring 3 acres 15 gunthas situated at Jhundal, taluka Gandhinagar (the disputed land for convenience) and directed the parties to the transaction to restore the original position failing which it would be resumed by the State Government.

2. The facts giving rise to this petition move in a narrow compass. The petitioner purchased the disputed land from the deceased by a registered sale deed executed on 14th October 1981. His name was mutated in the revenue records and the entry in that regard was certified on 24th March 1982. It appears that the transaction came to the notice of respondent No. 2. He appears to have found it in contravention of sec. 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act for brief). He therefore issued a show-cause notice on 31st May 1983 under sec. 84C of the Act calling upon the parties why the transaction should not be invalidated and the position not be restored. The proceeding came to be registered as Tenancy Case No. 3049 of 1983. It appears that the petitioner filed his reply thereto and inter alia contended that, after purchase of the disputed land, he has made huge investment therein. Thereafter, by the order passed on 15th June 1984 in the aforesaid tenancy proceedings, respondent No. 2 declared the sale transaction to be invalid and ordered restoration of the position as before failing which it would be resumed by the State Government. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before the appellate authority under sec. 74 of the Act. It came to be registered as Tenancy Appeal No. 164 of 1984. By the order passed on 23rd December 1985 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner carried the matter in revision before the Tribunal under sec. 76 of the Act. It came to be registered as Revision Application No. TEN.B.A. 231 of 1986. It was heard along with another revision application. By the common decision rendered on

10th January 1989 inter alia in Revision Application No. TEN.B.A. 231 1986, the Tribunal rejected it. Its copy is at Annexure C to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition as further affirmed in revision by the decision at Annexure C to this petition.

3. It is not in dispute that the show-cause notice for annulment of the sale transaction came to be issued nearly 15 months from the date of certification of the entry in the revenue records. The powers under sec. 84C of the Act are thus exercised beyond reasonable time. Such belated action on the part of respondent No. 2 cannot therefore be sustained in law in view of the ruling of this Court in the case of Mavji Dhorji and others v. The State of Gujarat and another reported in 1994(1) G.L.H. 20.

4. It is difficult to accept the submission urged before me by learned Assistant Government Pleader Shri Sompura for the respondents that the belated action on the part of respondent No. 2 by itself cannot invalidate the order at Annexure A to this petition. It may be noted that the petitioner appears to have contended before respondent No. 2, in reply to the show-cause notice, that he has made huge investment after purchase of the land. In para 4 of the memo of petition, he has clearly averred that, after the purchase of the disputed land, he has grown therein thousands of eucalyptus trees and has spent considerable amount for the said purpose. The authorities below have not applied their mind to this aspect of the case in the light of the aforesaid ruling of this Court.

5. Ordinarily, I might have remanded the case to respondent No. 2 for consideration of the matter in the light of the aforesaid contention regarding huge investment taken up by the petitioner in reply to the show-cause notice issued on 31st May 1983. Nearly 7 years have rolled by since the date of institution of this petition. The transaction was entered into between the parties some time on 14th October 1981, that is, nearly 15 years ago. In that view of the matter, no useful purpose will be served by remanding the matter to respondent No. 2 as the position of the land qua agricultural produce might have undergone a sea change at the instance of the petitioner by means of agricultural

operations.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition as further affirmed in revision by the decision of the Tribunal at Annexure C to this petition cannot be sustained in law. It has to be quashed and set aside.

7. In the result, this petition is accepted. The order passed by the Mamlatdar and Agricultural Lands Tribunal at Gandhinagar on 15th July 1984 in Tenancy Case No. 3049 of 1983 at Annexure A to this petition as affirmed in appeal by the order passed by the Deputy Collector at Gandhinagar on 23rd December 1985 in Tenancy Appeal No. 164 of 1984 at Annexure B to this petition as further affirmed in revision by the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad inter alia in Revision Application No. TEN.B.A. 231 of 1986 at Annexure C to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
